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Xerox Docket No. D/A1082

PATENT APPLICATION

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Peter M. GULVIN et al.

Group Art Unit: 2813

Application No.: 09/986,107 ✓

Examiner: D. Hogans

Filed: November 7, 2001

Docket No.: 109180

For: MEMBRANE STRUCTURES FOR MICRO-DEVICES, MICRO-DEVICES
INCLUDING SAME AND METHODS FOR MAKING SAME

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the July 29, 2003 Restriction and Election of Species Requirement,
Applicants provisionally elect Group I, directed to a method, and Species II. Claims 18-32
are readable on the elected Species.

It is respectfully submitted that the subject matter of at least claims 33-36,
corresponding to Group II, Species II, should be examined with the elected Species. The
Office Action fails to set forth a proper basis for restriction between the claims of Group I,
Species II and the claims of Group II, Species II.

The Office Action appears to set forth a basis for restriction between claim 1 (Group I,
Species I) and claim 16 (Group II, Species I), but the rationale presented in the Office Action
does not apply to claims 18-32 and claims 33-36. In other words, the basis for restriction
between Group I and Group II set forth in the Office Action is inapplicable to and cannot
support restriction between of claims 18-32 and claims 33-36.

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The Office Action has not established that the product recited in claims 33-36 can be performed by another and materially different process than that recited in claims 18-32, or that the process recited in claims 18-32 can be used to make another and materially different product than that recited in claims 33-36. Thus, the restriction requirement applied to claims 18-36 is improper and should be withdrawn.

Furthermore, it is respectfully submitted that the basis for restriction stated in the Office Action is incorrect. The Office Action asserts that a materially different process consisting of introducing point defects, dislocations or gross defects into the upper and lower portions of the layer may be used to make the micro-device/membrane for a micro-device recited in the claims. Applicants respectfully disagree.

It is respectfully submitted that the process suggested in the Office Action is not a method known to those skilled in the art, especially not in the manufacture of a membrane of a micro-device. Although the allegation of a different process need not be documented, the process should in fact exist rather than be left to speculation or conjecture. Applicants are unaware of any process that introduces point defects, dislocations or gross defects into different portions of a layer to control the strength gradients of the different portions, especially not in the art of micro-fabrication.

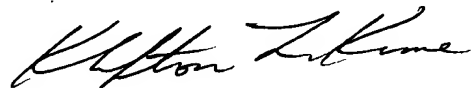
As such, the Office Action has not properly established that the product recited in claims 16-17 can be performed by another and materially different process than that recited in claims 1-15, or that the process recited in claims 1-15 can be used to make another and materially different product than that recited in claims 16-17. Thus, the restriction requirement applied to claims 1-17 is improper and should be withdrawn.

It is also respectfully submitted that the subject matter of all claims 1-36 is sufficiently related that a thorough search for the subject matter of any one Group of claims and species would encompass a search for the subject matter of the remaining claims and species. All of

the pending claims relate to membranes for micro-devices and fabrication thereof. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

Thus, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Respectfully submitted,



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Date: August 29, 2003

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